



# Bill Draft 2019-SVfz-13B: Clarify Digital Property Tax/Online Learning.

2019-2020 General Assembly

<b>Committee:</b>	Revenue Laws Study Committee	<b>Date:</b>	March 11, 2020
<b>Introduced by:</b>		<b>Prepared by:</b>	Trina Griffin
<b>Analysis of:</b>	2019-SVfz-13B		Committee Co-Counsel

**OVERVIEW:** *This bill draft would do the following:*

- *Clarify that the provision of education by certain institutions, regardless of whether all or a portion of the instruction or training is delivered through an online class or program, is not a taxable event.*
- *Exempt from sales tax the sales of audio works or audiovisual works by public or private K-12 schools or by institutions of higher education when those items are not part of a school's curriculum or vocational training programs. This could include continuing education courses, professional development courses, or personal development courses.*
- *Exempt from sales tax the purchase of a live or pre-recorded online presentation if the presentation was offered as a live event for educational purposes and for which there was an admission charge for in-person attendance.*

*This act is effective retroactively to October 1, 2019, and applies to sales occurring on or after that date.*

**CURRENT LAW:** North Carolina taxes the sale of the following digital property that is accessed or delivered electronically:

- Audio work – A series of musical, spoken, or other sounds, including a ringtone.
- Audiovisual work – A series of related images and any sounds accompanying the images that impart an impression of motion when shown in succession.
- A book, magazine, newspaper, newsletter, report, or another publication.
- Photograph or greeting card
- Digital codes used to purchase any of the above products.

**BACKGROUND:** Last year, the General Assembly made a change with respect to the taxation of digital property by removing language in the statute that said, in order for digital property to be taxable, the item "*would be taxable...if sold in a tangible medium.*" This change arose from a private letter ruling (PLR) request received by DOR in 2011. The taxpayer provided access to an online video catalog of continuing education courses for which users could take an exam at the conclusion of the course and receive a completion certificate. Because the taxpayer did not provide a tangible version of these videos, the Department concluded the videos were not taxable.

However, the outcome of this PLR was inconsistent with the plain meaning and intent of the statutory language. Because the statute stated that these items were taxable to the extent they "*would be taxable...if sold in a tangible medium,*" there was no requirement that the digital item actually exist in a tangible form.

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[Section 3.1\(b\) of S.L. 2019-169](#) deleted the phrase from the statute and had the effect of taxing the types of videos mentioned in the PLR, effective October 1, 2019, because they are not unlike any other video sold in a tangible format, which is taxable.

After this change was made, UNC inquired whether it was intended to have any impact on their online classes since, from a definitional standpoint, the terms "audio work" and "audiovisual work" could technically be interpreted to include live-streamed or pre-recorded videos of online classes and presentations. The change made in S.L. 2019-169 was not intended to tax online classes provided to enrolled students by educational institutions. In this context, the "transaction" is the provision of education, which North Carolina does not tax, rather than the sale of a digital good.

While it seems relatively clear that a "traditional" online class offered in an academic or vocational context is more like education and less like the sale of a digital good, that line is not always clear given the complexities and varieties of digital offerings by educational institutions. An educational institution often acts as both an educational provider and a retailer, competing in the same space as private companies who offer similar digital goods. Specifically, both educational institutions and private companies offer digital courses for skills-based professional development, personal development, and continuing education purposes. The policy question for the General Assembly is how to treat these digital goods and whether it wants to treat them differently based on the provider of the digital good.

**BILL ANALYSIS:** The bill does the following:

- Clarify that the delivery of instruction or training by a public or private K-12 school or an institution of higher education to an enrolled student or as part of vocational training, regardless of whether it is conducted online, is not the sale of digital property. North Carolina does not tax "education," as that term is defined in the bill, regardless of the delivery mechanism.
- Exempt sales of audio works or audiovisual works by public or private K-12 schools or by institutions of higher education. This exemption is intended to cover instances where a school is not necessarily "providing education," as that term is defined in the bill, but is engaging in the retail sale of digital goods, which is currently taxable. An example could be the sale of a continuing legal education course for attorneys in the form of an on-demand online video. While the digital good may be "educational," it is not necessarily part of an academic curriculum offered to enrolled students or part of a vocational training program intended to prepare a person for gainful employment in a recognized occupation. Under the draft, if the school is selling the audio work or audiovisual work, it would be exempt from tax.
- Exempt sales of audio works or audiovisual works to operators of home schools if the work is a qualifying educational expense under G.S. 115C-595(a)(3).
- Exempt sales of live or pre-recorded audio or audiovisual presentations that are accessed electronically, other than those provided by an educational institution, if the presentation was offered as a live event for which there was an admission charge for in-person attendance and that admission charge was exempt from sales tax because the live event was for educational purposes. This provision would exempt, for example, the sale of an online webinar, whether viewed in real-time or on-demand, by a private entity if the presentation is recorded from a live event. If the webinar is not a live-stream or recording of a live event, it would be taxable like any other video. The reason that the exemption is based on the offering of a live event is because the federal Internet Tax Freedom Act prohibits states from taxing an online version of a transaction if its similar offline version is not subject to tax, and North Carolina does not tax admission to live events for "educational purposes."

**EFFECTIVE DATE:** This bill is effective retroactively to October 1, 2019, to align with the effective date of the digital property change in S.L. 2019-169.